

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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AMERICAN OVERSIGHT,  
1030 15th Street NW, B255  
Washington, DC 20005

*Plaintiff,*

v.

U.S. DEPARTMENT OF JUSTICE,  
950 Pennsylvania Avenue NW  
Washington, DC 20530

*Defendant.*

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Case No. 19-cv-3540

**COMPLAINT**

1. Plaintiff American Oversight brings this action against the U.S. Department of Justice under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA), and the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, seeking declaratory and injunctive relief to compel compliance with the requirements of FOIA.

**JURISDICTION AND VENUE**

2. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1331, 2201, and 2202.

3. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(e).

4. Because Defendant has failed to comply with the applicable time-limit provisions of FOIA, American Oversight is deemed to have exhausted its administrative remedies pursuant to 5 U.S.C. § 552(a)(6)(C)(i) and is now entitled to judicial action enjoining the agency from

continuing to withhold agency records and ordering the production of agency records improperly withheld.

### **PARTIES**

5. Plaintiff American Oversight is a nonpartisan, non-profit section 501(c)(3) organization primarily engaged in disseminating information to the public. American Oversight is committed to the promotion of transparency in government, the education of the public about government activities, and ensuring the accountability of government officials. Through research and FOIA requests, American Oversight uses the information gathered, and its analysis of it, to educate the public about the activities and operations of the federal government through reports, published analyses, press releases, and other media. The organization is incorporated under the laws of the District of Columbia.

6. Defendant U.S. Department of Justice (DOJ) is a department of the executive branch of the U.S. government headquartered in Washington, DC, and an agency of the federal government within the meaning of 5 U.S.C. § 552(f)(1). The Office of Information Policy (OIP) is a component of DOJ and processes FOIA requests on behalf of itself and several other DOJ components including the Office of the Attorney General (OAG), the Office of the Deputy Attorney General (ODAG), and the Office of Legislative Affairs (OLA). The Executive Office for the United States Attorneys (EOUSA), the Criminal Division (CRIM), and the National Security Division (NSD) are also components of DOJ. DOJ has possession, custody, and control of the records that American Oversight seeks.

### **STATEMENT OF FACTS**

7. On September 25, 2019, the White House released a call memorandum memorializing President Trump's July 25, 2019 call with the president of Ukraine. On that call,

President Trump stated that he would ask his personal attorney, Rudy Giuliani, and the Attorney General to contact the Ukrainian government regarding investigations of his political opponent, former Vice President Joe Biden, and his son. *See* The White House, Memorandum of Telephone Conversation with President Zelenskyy of Ukraine, July 25, 2019, <https://www.whitehouse.gov/wp-content/uploads/2019/09/Unclassified09.2019.pdf>.

*OAG Communications FOIA*

8. On September 25, 2019, American Oversight submitted a FOIA request to DOJ seeking the following on an expedited basis:

1. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (1) the DOJ officials specified below and (2) Rudolph Giuliani, Sam Kislin, Victoria Toensing, or Joseph diGenova.
2. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (1) the DOJ officials specified below and (2) any representative of the government of Ukraine, including, but not limited to, Ukrainian President Zelensky.
3. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) of the DOJ officials specified below, regarding (1)

any plan by Rudolph Giuliani, Sam Kislin, Victoria Toensing, and/or Joseph diGenova to travel to Ukraine or to communicate with Ukrainian government officials or future Ukrainian government officials and/or (2) any other effort to encourage the Ukrainian government to investigate any matter related to former Vice President Joseph Biden or his son Hunter Biden, and/or (3) the August 12, 2019 Intelligence Community whistleblower complaint that may relate to the president or the administration's actions with respect to Ukraine and/or the Biden family.[FN Omitted]

Specified officials:

- i. Attorney General William Barr
- ii. Chief of Staff and Senior Counselor to the Attorney General Brian Rabbitt
- iii. Anyone else serving as Counselor to Attorney General Barr
- iv. Anyone serving as a Chief of Staff, Scheduler, or Assistant to Attorney General Barr
- v. Anyone serving as White House Liaison in the Office of the Attorney General

Please provide all responsive records from January 1, 2019, through the date the search is conducted.

9. OIP assigned this request tracking number DOJ-2019-007124.
10. By letter dated October 2, 2019, OIP informed American Oversight that it had granted American Oversight's request for expedited processing.
11. On October 24, 2019, OIP sent American Oversight a letter noting that it was administratively consolidating this request with the other OIP requests in this complaint. The letter indicated the requests would all be processed by OIP under tracking number DOJ-2019-007102.
12. American Oversight has not received any further communications from DOJ regarding this request.

*First Sent Key Terms FOIA*

13. On September 24, 2019, American Oversight submitted a FOIA request to DOJ seeking the following on an expedited basis:

All email communications (including email messages, calendar invitations, and attachments thereto, and including complete email chains) sent by the officials specified below containing any of the following key terms:[FN omitted]

- i. Rudy
- ii. Rudolph
- iii. Giuliani
- iv. Giuiliani
- v. Guliani
- vi. Toensing
- vii. diGenova
- viii. Hunter
- ix. Biden
- x. Parnas
- xi. Fruman
- xii. Kolomoisky
- xiii. Klitschko
- xiv. Burisma
- xv. Shokin
- xvi. Lutsenko
- xvii. Zelensky
- xviii. Zelenskyy
- xix. Zelenskiy
- xx. Yermak
- xxi. "Ukraine Security Assistance Initiative"
- xxii. USAI

Specified officials:

- i. Attorney General William Barr
- ii. Chief of Staff and Senior Counselor to the Attorney General Brian Rabbitt
- iii. Deputy Attorney General Jeffrey Rosen
- iv. Former Deputy Attorney General Rod Rosenstein
- v. Assistant Attorney General for Legislative Affairs Stephen Boyd
- vi. Acting Deputy Assistant Attorney General and Chief of Staff for Legislative Affairs Mary Blanche Hankey

- vii. Anyone serving in the capacity of White House Liaison or White House Advisor
- viii. Assistant Attorney General for the Office of Legal Counsel Stephen Engel
- ix. Anyone serving in the capacity of Chief of Staff for the Office of Legal Counsel

American Oversight has limited its request to sent messages of each official to reduce the volume of potentially responsive records. American Oversight still requests complete email chains. So, for example, if a specified official sent a response to an incoming message containing a key term listed above, the email chain containing the initially received message and the response is responsive to this request.

Please provide all responsive records from February 1, 2019, through the date the search is conducted.

- 14. OIP assigned this request tracking number DOJ-2019-007102.
- 15. OLC assigned this request tracking number FY19-211.
- 16. By letter dated September 27, 2019, OLC informed American Oversight that it had granted American Oversight's request for expedited processing.
- 17. By letter dated October 2, 2019, OIP informed American Oversight that it had granted American Oversight's request for expedited processing.
- 18. On October 24, 2019, OIP sent American Oversight a letter noting that it was administratively consolidating this request with the other OIP requests in this complaint. The letter indicated the requests would all be processed by OIP under tracking number DOJ-2019-007102.
- 19. American Oversight has not received any further communications from DOJ regarding this request.

*Multiple Component Communications FOIA*

20. On October 4, 2019, American Oversight submitted a FOIA request to DOJ seeking the following on an expedited basis:

1. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (1) the DOJ officials specified below and (2) Rudolph Giuliani, Sam Kislin, Victoria Toensing, or Joseph diGenova.
2. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (1) the DOJ officials specified below and (2) any representative of the government of Ukraine, including, but not limited to, Ukrainian President Zelensky.
3. All records reflecting communications (including emails, email attachments, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, or WhatsApp), telephone call logs, calendar invitations, calendar entries, meeting notices, meeting agendas, informational material, draft legislation, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) of the DOJ officials specified below, regarding (1) any plan by Rudolph Giuliani, Sam Kislin, Victoria Toensing, and/or Joseph diGenova to travel to Ukraine or to communicate with Ukrainian government officials or future Ukrainian government officials and/or (2) any other effort to encourage the Ukrainian government to investigate any matter related to former Vice President Joseph Biden or his son Hunter Biden, and/or (3) any issues regarding the August 12, 2019 Intelligence Community whistleblower complaint that involves [] the president and the administration's actions with respect to Ukraine and/or the Biden family, including records regarding the initial processing of the

whistleblower's concerns, which was reportedly first communicated via the General Counsel of the Central Intelligence Agency.[FN Omitted]

Specified officials:

- i. Deputy Attorney General Jeffrey Rosen, and anyone serving as his Chief of Staff
- ii. Former Deputy Attorney General Rosenstein
- iii. Associate Deputy Attorney General Tashina Gauhar
- iv. Principal Associate Deputy Attorney General Ed O'Callaghan
- v. Assistant Attorney General Brian Benczkowski, and anyone serving as his Chief of Staff or Principal Deputy Assistant Attorney General
- vi. Assistant Attorney General John Demers, and anyone serving as his Chief of Staff or Principal Deputy Assistant Attorney General
- vii. U.S. Attorney for the District of Connecticut John Durham, and anyone serving as his Chief of Staff or first assistant

Please provide all responsive records from January 1, 2019, through the date the search is conducted.

This request is attached as Exhibit A.

21. OIP assigned this request tracking number DOJ-2020-00065.
22. EOUSA assigned this request tracking number EOUSA-2020-000016.
23. CRIM assigned this request tracking number CRM-300800736.
24. On information and belief, NSD has not sent any communications to American Oversight regarding this request.
25. By FOIA Online system notification dated October 7, 2019, EOUSA indicated that it had denied American Oversight's request for expedited processing.
26. By letter dated October 8, 2019, CRIM informed American Oversight that it had granted American Oversight's request for expedited processing.

27. By letter dated October 11, 2019, OIP informed American Oversight that it had granted American Oversight's request for expedited processing.

28. On October 24, 2019, OIP sent American Oversight a letter noting that it was administratively consolidating this request with the other OIP requests in this complaint. The letter indicated the requests would all be processed by OIP under tracking number DOJ-2019-007102.

29. American Oversight has not received any further communications from DOJ regarding this request.

*Second Sent Key Terms FOIA*

30. On October 4, 2019, American Oversight submitted a FOIA request to DOJ seeking the following on an expedited basis:

All email communications (including email messages, calendar invitations, and attachments thereto, and including complete email chains) sent by specified DOJ officials containing any of the following key terms:[FN Omitted]

- i. Rudy
- ii. Rudolph
- iii. Giuliani
- iv. Giuiliani
- v. Guliani
- vi. Guiliani
- vii. Toensing
- viii. diGenova
- ix. Kislin
- x. Hunter
- xi. Biden
- xii. Parnas
- xiii. Fruman
- xiv. Kolomoisky
- xv. Klitschko
- xvi. Burisma
- xvii. Shokin
- xviii. Lutsenko
- xix. Zelensky

- xx. Zelenskyy
- xxi. Zelenskiy
- xxii. Yermak
- xxiii. Bakanov
- xxiv. “Ukraine Security Assistance Initiative”
- xxv. USAI

Specified officials:

- i. Principal Associate Deputy Attorney General Ed O’Callaghan
- ii. Associate Deputy Attorney General Tashina Gauhar
- iii. Assistant Attorney General Brian Benczkowski, and anyone serving as his Chief of Staff or Principal Deputy Assistant Attorney General
- iv. Assistant Attorney General John Demers, and anyone serving as his Chief of Staff or Principal Deputy Assistant Attorney General
- v. U.S. Attorney for the District of Connecticut John Durham, and anyone serving as his Chief of Staff or first assistant

American Oversight has limited its request to sent messages of each official to reduce the volume of potentially responsive records. American Oversight still requests complete email chains. So, for example, if the specified officials sent a response to an incoming message containing a key term listed above, the email chain containing the initially received message and the response is responsive to this request.

Please provide all responsive records from January 1, 2019, through the date the search is conducted.

This request is attached as Exhibit B.

- 31. OIP assigned this request tracking number DOJ-2020-00066.
- 32. EOUSA assigned this request tracking number EOUSA-2020-000017.
- 33. CRIM assigned this request tracking number CRM-300800745.
- 34. NSD assigned this request tracking number 20-012.
- 35. By FOIA Online system notification dated October 7, 2019, EOUSA indicated that it had denied American Oversight’s request for expedited processing.

36. By letter dated October 10, 2019, CRIM informed American Oversight that it had granted American Oversight's request for expedited processing.

37. By letter dated October 11, 2019, OIP informed American Oversight that it had granted American Oversight's request for expedited processing.

38. By letter dated October 21, 2019, NSD informed American Oversight that it had granted American Oversight's request for expedited processing.

39. On October 24, 2019, OIP sent American Oversight a letter noting that it was administratively consolidating this request with the other OIP requests in this complaint. The letter indicated the requests would all be processed by OIP under tracking number DOJ-2019-007102.

40. American Oversight has not received any further communications from DOJ regarding this request.

*Exhaustion of Administrative Remedies*

41. As of the date of this complaint, DOJ has failed to (a) notify American Oversight of any determination regarding its FOIA requests, including the scope of any responsive records DOJ intends to produce or withhold and the reasons for any withholdings; or (b) produce the requested records or demonstrate that the requested records are lawfully exempt from production.

42. Through DOJ's failure to respond to American Oversight's FOIA requests within the time period required by law, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review.

43. Through EOUSA's denial of American Oversight's requests for expedited processing, American Oversight has exhausted its administrative remedies and seeks immediate judicial review of that issue.

44. Through NSD's failure to make a determination as to American Oversight's request for expedited processing, notwithstanding the obligation of agencies under FOIA to respond within ten days to a request for expedited processing, American Oversight has constructively exhausted its administrative remedies and seeks immediate judicial review of that issue.

**COUNT I**  
**Violation of FOIA, 5 U.S.C. § 552**  
**Failure to Grant Expedited Processing**

45. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

46. American Oversight properly requested records within the possession, custody, and control of EOUSA and NSD on an expedited basis.

47. EOUSA and NSD are components of DOJ, which is an agency subject to FOIA and must process FOIA requests on an expedited basis pursuant to the requirements of FOIA and agency regulations.

48. The records American Oversight has requested are urgently needed to inform the public about government activities of extraordinary public importance, and American Oversight is primarily engaged in disseminating information to the general public. Therefore, American Oversight's requests justify expedited processing under FOIA and agency regulations.

49. American Oversight is therefore entitled to declaratory and injunctive relief requiring EOUSA and NSD to grant expedited processing of American Oversight's FOIA requests.

**COUNT II**

**Violation of FOIA, 5 U.S.C. § 552**

**Failure to Conduct Adequate Searches for Responsive Records**

50. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

51. American Oversight properly requested records within the possession, custody, and control of DOJ.

52. DOJ is an agency subject to FOIA, and it must therefore make reasonable efforts to search for requested records.

53. DOJ has failed to promptly review agency records for the purpose of locating those records that are responsive to American Oversight's FOIA requests.

54. DOJ's failure to conduct an adequate search for responsive records violates FOIA and DOJ regulations.

55. Plaintiff American Oversight is therefore entitled to injunctive and declaratory relief requiring Defendant to promptly make reasonable efforts to search for records responsive to American Oversight's FOIA requests.

**COUNT III**

**Violation of FOIA, 5 U.S.C. § 552**

**Wrongful Withholding of Non-Exempt Responsive Records**

56. American Oversight repeats the allegations in the foregoing paragraphs and incorporates them as though fully set forth herein.

57. American Oversight properly requested records within the possession, custody, and control of DOJ.

58. DOJ is an agency subject to FOIA, and it must therefore release in response to a FOIA request any non-exempt records and provide a lawful reason for withholding any materials.

59. DOJ is wrongfully withholding non-exempt agency records requested by American Oversight by failing to produce non-exempt records responsive to its FOIA requests.

60. DOJ is wrongfully withholding non-exempt agency records requested by American Oversight by failing to segregate exempt information in otherwise non-exempt records responsive to American Oversight's FOIA requests.

61. DOJ's failure to provide all non-exempt responsive records violates FOIA and DOJ regulations.

62. Plaintiff American Oversight is therefore entitled to declaratory and injunctive relief requiring Defendant to promptly produce all non-exempt records responsive to its FOIA requests and provide indexes justifying the withholding of any responsive records withheld under claim of exemption.

### **REQUESTED RELIEF**

WHEREFORE, American Oversight respectfully requests the Court to:

- (1) Order Defendant's components EOUSA and NSD to process American Oversight's requests on an expedited basis;
- (2) Order Defendant to conduct a search or searches reasonably calculated to uncover all records responsive to American Oversight's FOIA requests;

- (3) Order Defendant to produce, within twenty days of the Court's order, or by such other date as the Court deems appropriate, any and all non-exempt records responsive to American Oversight's FOIA requests and indexes justifying the withholding of any responsive records withheld under claim of exemption;
- (4) Enjoin Defendant from continuing to withhold any and all non-exempt records responsive to American Oversight's FOIA requests;
- (5) Award American Oversight the costs of this proceeding, including reasonable attorneys' fees and other litigation costs reasonably incurred in this action, pursuant to 5 U.S.C. § 552(a)(4)(E); and
- (6) Grant American Oversight such other relief as the Court deems just and proper.

Dated: November 25, 2019

Respectfully submitted,

/s/ Daniel A. McGrath

Daniel A. McGrath

D.C. Bar No. 1531723

/s/ Sara Kaiser Creighton

Sara Kaiser Creighton

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